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Office-Supreme Court, U.S.

FILED

AUG 1 1983

ALEXANDER L. STEVAS,
CLERK

CASE NO.

IN THE
SUPREME COURT OF THE UNITED STATES
1983 TERM

ARTURO FERNANDEZ, :

Petitioner, :

v. :

UNITED STATES OF AMERICA, :

Respondent. :

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX

HALL AND O'BRIEN, P.A.
Andrew C. Hall, Esquire
Attorneys for Petitioner
Suite 200,
Brickell Conours
1401 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 374-5030

NOTE:

Subsequent to the submission of the Petition for Certiorari to the Supreme Court of the United States, this Appendix has been revised to comply with Rule 33 of the Supreme Court Rules. The Index to Appendix which follows, therefore , contains two columns of page numbers. The first column represents the original page references found in the Petition. The second column represents the matching, revised page numbers contained in this Appendix.

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FERNANDEZ v. UNITED STATES

Arturo FERNANDEZ and Inversal Administra-
cion E Inversiones Limited, a Colombian
Limited Partnership, Plaintiff-Appellant,

v.

UNITED STATES of America,

Defendant-Appellee.

No. 82-5161

Non-Argument Calendar.

United States Court of Appeals,

Eleventh Circuit,

May 2, 1983.

Taxpayer brought action challenging reasonableness of termination assessment by Internal Revenue Service. The United States District Court for the Southern District of Florida, Sidney M. Aronovitz, J., dismissed action as time barred, and taxpayer appealed. The Court of Appeals held that taxpayer's suit was time barred by taxpayer's failure to file suit within time limitations of statute providing for

judicial review of termination assessments.

Affirmed.

1. Internal Revenue - 4638

Taxpayer's suit challenging reasonableness of termination assessment by Internal Revenue Service was time barred by taxpayer's failure to file suit within time limitations of statute providing for judicial review of termination assessments. 26 U.S.C.A. §§ 7429, 7429(a)(2), (b)(1), 6851.

2. Internal Revenue - 4638

Time limitations of statute governing judicial review of termination assessments are mandatory and not permissive. 26 U.S.C.A. §§ 7429, 7429(b)(1).

Appeal from the United States District Court for the Southern District of Florida.

Before TJOFLAT, JOHNSON and HATCHETT.
Circuit Judges.

PER CURIAM:

This is an action to determine the reasonableness of a termination assessment under IRC § 7429(b). Upon motion by the government, the district court dismissed the action as time barred. We affirm.

On August 3, 1981, the Internal Revenue Service (IRS) made a termination assessment under IRC §6851 against the appellant, Arturo Fernandez. The termination assessment was for the taxable year January 1, 1981, to July 28, 1981, for \$2,848,181. Upon notification, Fernandez was advised that a suit challenging the reasonableness of the termination assessment "must be filed within thirty days after the earlier of (1) the date the Service notifies you of its decision

on your protest, or (2) the sixteenth day after your protest."

[1, 2] On August 27, 1981, Fernandez requested an administrative review before the IRS pursuant to IRC §7429(a)(2). After the administrative review, Fernandez was notified by letter dated November 2, 1981, that the IRS would uphold its assessment. On November 16, 1981, Fernandez instituted this action in the district court under section 7429. After commencing a hearing on the government's motion to dismiss, the district court held that Fernandez violated the time limitations of section 7429(b)(1). The court reasoned that the time limitations of section 7429(b)(1) are mandatory and not permissive because to hold otherwise "[would] be incongruous with the legislative goal of prompt review and resolution." We agree with

the district court's conclusion and reasoning.

Section 7429 is a relatively new addition to the Internal Revenue Code. The objective of this section is to provide an "expedited" means of judicial review of termination or jeopardy assessments made by the IRS. S.Rep. No. 938 (Part I) 94th Cong.2d Sess. 364 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 3793. Fernandez argues that the court narrowly construed the limitations of section 7429(b)(1) and thus, effectively defeated the purpose of section 7429. We cannot agree with Fernandez's conclusion. Section 7429(b)(1) provides:

Judicial review--

(1) Actions permitted--Within 30 days after the earlier of--

(A) the day the Secretary notifies the taxpayer of his determination described in subsection (a)(3), or

(B) the 16th day after the request described in subsection (a)(2) was made, the taxpayer may bring a civil action against the United States in a district court of the United States

for a determination under this subsection.

The record reveals that on August 27, 1981, Fernandez requested a timely administrative review. On November 2, 1981, the IRS notified Fernandez of its actions. In order to meet the time limitation imposed by section 7429(b)(1), Fernandez had to file within thirty days after the earlier of November 2, 1981, or sixteen days after August 27, 1981. Since the earlier of the two dates was August 27, 1981, it is the date of measurement for purposes of section 7429(b)(1). The sixteenth day after August 27, 1981, was September 12, 1981. Therefore, Fernandez was required to commence action on or before October 12, 1981; instead, he filed on November 16, 1981, which was not the earlier of the two alternatives.

Alternatively, Fernandez argues that the provisions of section 7429(b)(1) are

permissive and not mandatory. The language of the statute itself negates such an interpretation. To adopt Fernandez's argument would mean the Congress intended that the taxpayer in every case would have thirty days following the administrative determination by the Secretary. If Congress had so intended it would have omitted the word "earlier" from the statute and replaced it with the word "either." The objective of the statute is to provide expedited review. S.Rep. No. 938 (Part I) 94th Cong.2d Sess. 364 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 3793. If we were to accept the rationale of Fernandez's argument, the objective of expedience would be defeated. We therefore affirm the decision of the district court dismissing the action as time barred.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 81-2531-Civ-SMA

ARTURO FERNANDEZ and INVERSAL
ADMINISTRACION E INVERSIONES, LTD.,
a Colombian Limited Partnership,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER OF DISMISSAL

THIS CAUSE came before the Court upon the Respondent's Motion to Dismiss the Petitioner's Petition for determination of termination assessment under 26 U.S.C. §7429. The Court held a hearing on the pending motion to dismiss at which time counsel for Petitioner Inversal Administracion E Inversiones Ltd. conceded the merit of the Government's motion to dismiss Petitioner Inversal and voluntarily dismissed without prejudice Inversal's cause of action.

On August 27, 1981, Petitioner/Taxpayer Fernandez made a request by letter for administrative review from the Secretary of Treasury of a jeopardy tax assessment, pursuant to 26 U.S.C. §7429(a)(2). By letter dated November 2, 1981, the Secretary informed Fernandez that the making of the termination assessment was reasonable and that the amount so assessed was appropriate under the circumstances. Petitioner Fernandez filed this action for judicial review on November 16, 1981.

A prerequisite for seeking judicial review of a jeopardy assessment is compliance with the time limitations in 26 U.S.C. §7429(b)(1). Zakem v. United States, 78 U.S.T.C. ¶9584 (W.D. Wis. 1978); Strickland v. United States, No. 79-6549-CIV-JAG (S.D. Fla. Dec. 11, 1979) (unpublished opinion). Therefore, in order to be timely, this action had to be

commenced within 30 days after the earlier of November 2, 1981, the date of the Secretary's notification, or September 12, 1981, the 16th day after the August 27th request by Fernandez for judicial review. Since this action was not filed until November 16, 1981, it is clearly time barred.

Petitioner Fernandez argues that the time limitations are merely permissive rather than mandatory. However, the legislative intent in enacting 26 U.S.C. §7429 was to provide for review by the U.S. District Court on an expedited basis. S.Rep. No. 94-938, 94th Cong., 2nd Sess. p. 364. Petitioner's suggestion that Section 7429(b)(1) be construed to permit the taxpayer to avoid the time limits and bring suit at any time after administrative review is concluded would allow suits at the taxpayer's leisure six months, one year or

two years after the review is concluded. Such a construction would be incongruous with the legislative goal of prompt review and resolution.

Notwithstanding the holding in Malajalian v. United States, 505 F.2d 842 (2nd Cir. 1974), which recognized a rational reason for the unequal treatment preventing alien tax suits in the U.S. District Courts, Petitioner Fernandez insists that the venue provision, Section 7429(e), which excludes non-resident aliens from obtaining District Court review of termination assessments, is unconstitutional because it has the effect of precluding judicial review under Section 7429 and instead forces Petitioner to pursue other judicial remedies in the Court of Claims and Tax Court. However, in view of the Court's disposition of this case based on the failure of Petitioner to comply with the

statute's mandatory time limits, Petitioner's constitutional claims need not be addressed. See, Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-348 (1936) (Brandeis, J., concurring).

Having considered the argument of counsel and the record herein, it is

ORDERED AND ADJUDGED that Respondent's Motion to Dismiss is hereby GRANTED and this cause is DISMISSED without prejudice to seeking judicial review in any court of competent jurisdiction.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of January. 1981.

/S/

UNITED STATES DISTRICT JUDGE

Copies furnished to:

Randall M. Roden, Dept. of Justice
Andrew C. Hall, Esquire

INTERNAL REVENUE SERVICE

Regional Southeast Region

Mr. Andrew C. Hall
Hall & Hauser, P.A.
1401 Brickell Avenue
Miami, Florida 33131

Department of the Treasury

Address any reply to Appellate Division
Rm. 316, 51 S.W. 1st Ave., Miami,
Florida 33130

Person to Contact:

Joseph M. Rodriguez
Telephone No. (305) 350-4426

Refer Reply to:

AP:MIA:JMR

Date: Nov. 2, 1981

In Re: Administrative Review of
Termination Assessment for
the period 1/1/81 through
7/28/81 of Arturo Fernandez

Dear Mr. Hall:

We have considered the evidence and arguments submitted in the above-captioned matter and we have concluded that the making of the assessment by the District Director is reasonable, and the amount so assessed is appropriate under

the circumstances. This concludes the administrative review prescribed by Section 7429(a) of the Internal Revenue Code.

Sincerely,

/S/
Joseph M. Rodriguez
Appeals Officer

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PTF/DEF 23 Nearest MAG. NO./
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PLAINTIFFS

1-ARTURO FERNANDEZ
2-INVERSAL ADMINISTRACION E INVERSIONES
LTD., a Colombian Limited Partnership

/ C-7 /

DEFENDANTS

UNITED STATES OF AMERICA

TAX SUIT:

26 USC 7429(b)(1)(A) & (B)

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH
THE CASE IS FILED AND WRITE A BRIEF
STATEMENT OF CAUSE)

Petition for determination of termination
assessment.

ATTORNEYS

HALL AND HAUSER, P.A.
1401 Brickell Ave.
Miami, Fl. 33131

ATLEE W. WAMPLER, III
U.S.A.
by Randall M. Roden, Trial Attorney
Tax Division
Dept. of Justice
Washington, D.C. 20530
Telephone: 724-6522

2/2/82 DC & CCA pd. (Pltf Fernandez)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CIVIL DIVISION

CASE NO.

ARTURO FERNANDEZ and :
INVERSAL ADMINISTRACION :
E INVERSIONES LTD., a :
Colombian Limited Partner- :
ship, :

Petitioners, :

vs. :

UNITED STATES OF AMERICA, :

Respondent. :

PETITION FOR DETERMINATION UNDER
TITLE 26

ARTURO FERNANDEZ (FERNANDEZ) and
INVERSAL ADMINISTRACION E INVERSIONES,
LTD. (INVERSAL), by and through under-
signed counsel, hereby brings this civil
action against the United States of
America in the District Court of the
Southern District of Florida and in
support thereof allege:

1. This Court has jurisdiction over
this cause pursuant to Title 26 U.S.C.

Section 7429(b)(1)(A) & (B).

2 On August 3, 1981, the Secretary of the Treasury through his revenue officers or service representatives entered a termination assessment against FERNANDEZ under Section 6851 of the Internal Revenue Code, 1954, a copy of which is attached hereto as Exhibit "A".

3. As a result of the entry of the termination assessment by the Secretary or his agents, the Internal Revenue Service filed a Federal Tax Lien against FERNANDEZ in the sum of \$2,848,181.00, a copy of which is attached hereto as Exhibit "B".

4. As a result of said termination assessment and the filing of a Federal Tax Lien, the Secretary or his agents executed notice of levy on the National Bank of North America in New York against one account held in the name of Petitioner INVERSAL and allegedly owned

by FERNANDEZ.

5. Within thirty (30) days after the day on which FERNANDEZ was furnished with the written statement called for by Paragraph (a)(1) of Section 7429 of the Internal Revenue Code of 1954, FERNANDEZ requested administrative review through counsel, a copy of which is attached hereto as Exhibit "C".

6. The Secretary was requested to determine whether or not the making of the assessment under Section 6851 was reasonable under the circumstances and whether the amount so assessed or demanded as a result of the action taken under the foregoing Section was appropriate under the circumstances.

7. At the Secretary's request, the Petitioner's appellate hearing was postponed until October 20, 1981.

8. On November 2, 1981, the Secretary denied Petitioner's claim that the

Department of Treasurer had unreasonably and inappropriately assessed income to Petitioner FERNANDEZ. A copy of the Secretary's notification is attached hereto as Exhibit "D".

9. This action is filed within thirty (30) days after the day that the Secretary notified the Petitioner of the administrative determination.

10. This action is also filed within thirty (30) days after the sixteenth (16) day after the request for review was made to the Secretary of the Treasury (October 20, 1981).

11. Under the provisions of Title 28 U.S.C. 1401 (c) wherein the United States is a defendant, venue lies in the judicial district in which the event occurred which gave rise to the cause of action; the assessment, notice of lien, and levy attempt were made in or from Dade County, Florida within the

jurisdiction of the United States District Court for the Southern District of Florida.

12. FERNANDEZ is a nonresident alien, not engaged in any trade or business in the United States.

13. INVERSAL is a Colombian limited partnership not engaged in any trade or business in the United States.

14. It is a fact that nonresident aliens not engaged in a trade or business in the United States are not subject to income tax in the United States. Therefore, termination of the taxable year, notice of lien and attempted levy against Petitioner cannot possibly be reasonable if Petitioner is not subject to United States income tax by reason of his being a nonresident alien not engaged in a trade or business in the United States.

15. If this Court determines that

Petitioner is engaged in a trade or business in the United States, Petitioner respectfully requests this Court to abate the termination assessment on the grounds that it was not reasonable under the circumstances and that the amount assessed was not appropriate under the circumstances.

16. The Petitioner acts as a broker for nonresident aliens through the operation of bank accounts in the United States and therefore cannot be deemed to be engaged in a trade or business in the United States. See generally, Regulation 1.864-2(c) and 1.864-2(d).

MEMORANDUM OF LAW

A nonresident alien can be taxed in the United States only on income connected with a United States business or on income derived from interest, dividend, rents, salaries, wages,

premiums, annuities, compensations, remunerations, and other fixed or determinable annual or periodical gains, profits and income. IRC §871(l)(A).

Nonresident aliens, not engaged in a trade or business in the United States and not receiving United States source income are not taxable in the United States. Reg. 1.871-2 through Reg. 1.871-13, promulgated by the Internal Revenue Service.

Before the United States is permitted to offer proof of reasonableness of the assessment under the guidelines of Haskin v. United States, 78-1 USDC 9197, 444 F. Supp. 299 (that the taxpayer is about to depart from the United States or conceal himself or to place his property beyond the reach of the government, etc.), the government must first cross the initial threshold as to whether Petitioner is a taxpayer at all. McAvoy v. IRS, U.S.

D.C. West District, Michigan, No. 79-266, 7/3/79).

Mere bank deposit activity is legally insufficient to establish that Petitioner is engaged in a trade or business in the United States, and, in fact, is inadmissible as evidence for that purpose. See generally, Regulation 1.864-2(c) and 1.864-2(d). See also, Internal Revenue Code §861(c)(1) as to non-United States source of bank interest. See Committee Report on Public Law, 93-625(0.010) "Exclusion from Gross Income of U.S. Bank Deposits Held by Non-Resident Aliens." Clearly, if such interest is exempt, if not effectively connected with conduct of a trade or business within the United States, then the act of depositing the potential interest generating funds in the bank account is not, by definition, a trade or business.

However, if this Court determines that Petitioner is engaged in a trade or business in the United States, Petitioner respectfully submits that the termination assessment was arbitrary and capricious based upon the fact that Petitioner merely acts as a nonresident alien broker and the following law:

The Petitioner's bank deposits cannot be treated as taxable gross income where the Petitioner acts as an agent for the funds or others. Kaas 1BTA 1115, Dec. 430 (Acq.). (CCH ¶2767/0521 p. 35,076). See also M. Gaspar, 27 TCM 634, TC Memo 1968-131 (CCH ¶2767.0560 p. 35,081) and Lloyd S. Elder, 9 TCM 59 (CCH ¶2767.0531 p. 35,076), where it was held that certain deposits were wrongfully assessed as gross income where the taxpayer operated a check cashing service.

WHEREFORE, Petitioners respectfully pray for an order of the Court requiring

Respondent to show cause why a Peremptory Writ should not be issued declaring the termination assessment void, release the claim of lien, release the levy on Petitioner's bank account, and return all property seized, if any.

Respectfully submitted,

HALL AND HAUSER, P.A.
Attorneys for Petitioner
Suite 200, Brickell Concours
1401 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 374-5030

By: /S/
 ANDREW C. HALL

INTERNAL REVENUE SERVICE

Mr. Arturo Fernandez
A/K/A Turi Fernandez
2333 Brickell Avenue #901
Miami, Florida

August 3, 1981

NOTICE OF TERMINATION ASSESSMENT OF
INCOME TAX

Dear Mr. Fernandez:

Under section 6851 of the Internal Revenue Code, you are notified that I have found you designing to quickly place property beyond the reach of the Government by either concealing or dissipating it thereby tending to prejudice or render ineffectual collection of income tax for the current taxable year. Accordingly, the income tax, as set forth below, is due and payable immediately.

<u>Taxable Year</u>	<u>Tax</u>	<u>Penalty</u>
1/1/81 to 7/28/81	\$2,848,181.00	-0-

Based on information available at this

time, tax and penalty, if any, reflected in the attached computations, have been assessed.

This action does not relieve you of the responsibility for filing a return for your usual annual accounting period under section 6012 of the Code. Such return must be filed with the office of the District Director of the district in which you reside, or the district in which your principal office is located, not with the Internal Revenue Service Center. A copy of this letter should accompany the return so that any amount collected as a result of this termination assessment will be applied against the tax finally determined to be due on your annual return or to be credited or refunded.

Under section 7429 of the Internal Revenue Code, you are entitled to request administrative and judicial reviews of

this assessment action.

For an administrative review, you may file a written protest with the District Director within 30 days from the date of this letter, requesting redetermination of whether or not:

1. the making of the assessment is reasonable under the circumstances, and
2. the amount so assessed or demanded as a result of the action is appropriate under the circumstances.

A conference will be held on an expedited basis by the Regional Appeals Office to consider your protest.

If you submit information or documentation for the first time at an Appeals conference, the Appeals Office may request comment from the District Director on such evidence or documents.

As indicated above, enforced collection action may proceed during any administrative appeal process unless

arrangements are made regarding collection of the amount assessed. To make such arrangements, please contact Tom Karras 305-350-4364.

You may request a judicial review of this assessment by bringing a civil suit against the United States in the U.S. District Court in the judicial district in which you reside or in which your principal office is located. However, in order to have this action reviewed by the District Court, you must first request administrative review within 30 days after the earlier of (1) the day the Service notifies you of its decision on your protest, or (2) the 16th day after your protest. The Court will make an early determination of the same points raised in your protest to determine whether the making of the assessment is reasonable under the circumstances and to determine whether the amount assessed or

demanded as a result of the action is appropriate under the circumstances. The Court's determination is final and not reviewable by any other court.

Very truly yours,

/S/
Charles O. DeWitt
District Director

Enclosure
Computation

FORM 668 NOTICE OF FEDERAL TAX LIEN
UNDER INTERNAL REVENUE LAWS

District: Jacksonville, Florida

Taxpayer: Arturo Fernandez A/K/A
Tuni Fernandez

Residence: 2333 Brickell Avenue
#901
Miami, Florida 33129

Kind of Tax: 1040

Tax Period Ended: 1/1/81 thru 7/28/81

Date of Assessment: 8/3/81

Identifying #: 910-07-7901

Unpaid Balance of Assessment:

\$2,843.181.00

Place of Filing: Dade County
Clerk, Circuit Court
Miami, Florida

Prepared & Signed: Miami, Florida on the
4th day of August,
1981.

Signature: /S/
TOM KARRAS

Title: Revenue Officer

HALL AND HAUSER, P.A.

August 27, 1981

HAND DELIVERY

District Director of
Internal Revenue
51 Southwest First Avenue
Miami, Florida 33130

ATTN: ALAN PASTERNAK; 1602

Re: Arturo Fernandez - Taxpayer
Termination Assessment dated
8/3/81
Our File No. 81-3775

Dear Sir:

Pursuant to Section 7429(a)(2) of the Internal Revenue Code and the regulations thereunder, request is hereby made for review of the termination assessment made pursuant to Section 6851(a) of the Internal Revenue Code for the above-named taxpayer in the amount of \$2,848,181. In particular, taxpayer believes that making a termination assessment was not reasonable under the circumstances and that the amount assessed was not appropriate under the circumstances and,

therefore, the assessment should be abated.

If, after your preliminary review, you do not agree with the taxpayer that the assessment should be abated, taxpayer respectfully requests a conference with the Appeals Office so that he may be heard. Please address all communications in connection with this matter to me, the taxpayer's attorney, Andrew C. Hall, c/o Hall and Hauser, P.A., Suite 200. Brickell Concourse, 1401 Brickell Avenue, Miami, Florida 33131. A power of attorney (Form 2848) authorizing me to represent the taxpayer in connection with this matter is being forwarded herewith and has been mailed to the Internal Revenue Service Office in Jacksonville, Florida.

The facts upon which taxpayer relies are as follows:

1. Taxpayer visits the U.S. regularly

and has no intent or design to conceal himself from the government.

2. Taxpayer has no design to place his property beyond the reach of the government either by removing it from the country, or concealing it, or by transferring it to other persons, or by dissipating it.

3. Taxpayer's financial solvency is not in peril (except for the improper taking of funds by way of a termination assessment).

4. The assessment dated August 3, 1981 erroneously assumes that all deposits made to bank account No. 2-199-20357-8 at the National Bank of North America ("the Account") represent income from sales and that 50% of such amount represents cost of sales. In fact, the deposits to the account represent funds of persons unrelated to taxpayer. Said funds were received from unrelated

persons and transmitted on behalf of such persons by bank transfer to the Account. In exchange for providing this transfer service a commission is paid outside the United States equal to less than one-half of one percent of the amounts transferred.

In view of the foregoing, it is apparent that (a) the moneys transferred and deposited to National Bank of North America are not income from sales; (b) the amount, if any, of income derived from these transactions was income earned outside the United States and is not subject to U.S. income taxation, and (c) the amount of gross income earned is less than one-half of one percent of the amount deposited to the Account and not 50 percent.

Therefore, it is requested that the assessment be abated in full (or, alternatively, that the assessment be

reduced, based on a gross income before expenses of \$40,936.

Respectfully,

/S/
Andrew C. Hall

Enclosures

INTERNAL REVENUE SERVICE

Regional Southeast Region

Mr. Andrew C. Hall
Hall & Hauser, P.A.
1401 Brickell Avenue
Miami, Florida 33131

Department of the Treasury

Address any reply to Appellate Division
Rm. 316, 51 S.W. 1st Ave., Miami,
Florida 33130

Person to Contact:

Joseph M. Rodriguez
Telephone No. (305) 350-4426

Refer Reply to:

AP:MIA:JMR

Date: Nov. 2, 1981

In Re: Administrative Review of
Termination Assessment for
the period 1/1/81 through
7/28/81 of Arturo Fernandez

Dear Mr. Hall:

We have considered the evidence and arguments submitted in the above-captioned matter and we have concluded that the making of the assessment by the District Director is reasonable, and the amount so assessed is appropriate under

the circumstances. This concludes the administrative review prescribed by Section 7429(a) of the Internal Revenue Code.

Sincerely,

/S/
Joseph M. Rodriguez
Appeals Officer

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CIVIL NO. 81-2531-CIV-SMA

ARTURO FERNANDEZ and INVERSAL
ADMINISTRACION E INVERSIONES LTD.,
a Colombian Limited Partnership,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION TO DISMISS

Respondent United States of America,
by and through its attorney, Atlee w.
Wampler, III, United States Attorney for
the Southern District of Florida, hereby
moves the Court to dismiss this action on
the grounds that the Court lacks
jurisdiction of this action by petitioner
Inversal Administracion E Inversiones
Ltd. and the Court lacks venue of this
action by petitioners Arturo Fernandez
and Inversal Administracion E Inversiones

Ltd. for judicial review under Section 7429 of the Internal Revenue Code of 1954 (26 U.S.C.), and that the action by petitioners is barred by the time limitations contained in Section 7429 of the Code.

ATLEE W. WAMPLER, III
United States Attorney

By: /S/
RANDALL M. RODEN
Trial Attorney,
Tax Division
Department of Justice
Washington, D.C. 20530
Telephone:
(202) 724-6522
FTS 724-6522

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CIVIL NO. 81-2531-CIV-SMA

ARTURO FERNANDEZ and INVERSAL
ADMINISTRACION E INVERSIONES LTD.,
a Colombian Limited Partnership,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER OF DISMISSAL

THE COURT having received ore tenus notice of voluntary dismissal without prejudice of its cause by Counsel for INVERSAL ADMINISTRACION E INVERSIONES LTD. and said Counsel having represented to the Court that an Order of Dismissal is proper, it is accordingly

ORDERED AND ADJUDGED that claims of Petitioner INVERSAL ADMINISTRACION E INVERSIONES LTD. in the above-captioned cause are hereby DISMISSED WITHOUT PREJUDICE.

DONE AND ORDERED in Chambers at Miami,
Florida, this 12th day of January, 1982.

/S/
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Randall M. Roden, Dept. of Justice
Andrew C. Hall, Esq.